KEYWORD: Foreign Influence; Foreign Preference

DIGEST: Applicant is a 41-year-old male who works for a government contractor. A few years after marrying an Israeli citizen, he moved his family to Israel in order to raise his children in a thriving Jewish community. The move entailed the acquisition of Israeli citizenship. Three years later, they returned to the United States. Applicant has started the process for renouncing his Israeli citizenship, has returned his passport to Israel, explained his reasons for moving, and fully described his relationship to his parents-in-law and brother-in-law. Applicant has mitigated security concerns regarding his in-laws and his nationality preference. Clearance is granted.

CASENO: 04-11605.h1

DATE: 01/31/2006

DATE: January 31, 2006

In re:

SSN: ----------

Applicant for Security Clearance

ISCR Case No. 04-11605

DECISION OF ADMINISTRATIVE JUDGE

ARTHUR E. MARSHALL, JR.

APPEARANCES

FOR GOVERNMENT

Ray T. Blank, Esq., Department Counsel

FOR APPLICANT

Sheldon I. Cohen, Esq.

SYNOPSIS

Applicant is a 41-year-old male who works for a government contractor. A few years after marrying an Israeli citizen, he moved his family to Israel in order to raise his children in a thriving Jewish community. The move entailed the acquisition of Israeli citizenship. Three years later, they returned to the United States. Applicant has started the process for renouncing his Israeli citizenship, has returned his passport to Israel, explained his reasons for moving, and fully described his relationship to his parents-in-law and brother-in-law. Applicant has mitigated security concerns regarding his in-laws and his nationality preference. Clearance is granted.

STATEMENT OF THE CASE

On January 5, 2005, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.[(1)] The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline B (Foreign Influence) and Guideline C (Foreign Preference).

In a sworn statement, dated January 27, 2005, Applicant responded to the SOR allegations and requested a hearing. In his SOR response, Applicant admitted all of the allegations under Guideline B. He admitted five of the allegations under Guideline C and denied two of them.[(2)] The case was assigned to me on April 4, 2005. A notice of hearing was issued on April 22, 2005, scheduling the hearing for May 24, 2005. The hearing was conducted as scheduled. The government submitted 10 exhibits that were marked as Government Exhibits (GE) 1-10. The exhibits were admitted into the record without objection. Applicant testified on his own behalf, and submitted 24 exhibits that were marked as Applicant's Exhibits A-X. The exhibits were admitted without objection. Applicant also produced two witnesses. DOHA received the hearing transcript (Tr.) on June 2, 2005.

FINDINGS OF FACT

Applicant's admissions to the allegations in the SOR, are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 41 years old and was born in the United States (U.S.). His parents, both Latin American immigrants and current U.S. citizens, raised him in the U.S. He holds both a Bachelor's degree and a Master's degree in computer engineering from a university in his home town. Currently, he works as a senior systems engineer in the military defense simulation industry.

After completing his graduate studies in 1988, Applicant left his hometown and began working for the U.S. Navy in a civilian capacity. He met his wife, an Israeli citizen, in June 1990 and they were married that October. A daughter and a son were born in 1991 and 1994, respectively. in October 1990. Between children, Applicant transferred to a career position with the Army in 1993, and continued to work for the Army until February 1998.

Prior to leaving the Army, Applicant and his wife found themselves unhappy with their city's Jewish community. They concluded it was not the environment in which they wished to raise children and decided to move to a town where they had family. This narrowed their choices down to Applicant's hometown and Israel. They chose Israel not only because of the Jewish community and family, but also because it had job opportunities for Applicant in the defense simulation field. After ruling out his hometown because it lacked sufficient job opportunities in his field, they looked to his wife's family and Israel. Through their annual trips to Israel,[(3)] he had developed relationships with his wife's family and made family friends. Through such contacts, he found one defense industry company interested in him, but the Israeli security interviews became too time consuming. He eventually withdrew from the selection process.[(4)] A job offer from a similar company was eventually extended and, around February 7 or 8, 1998, Applicant moved to Israel to start work; his family followed on May 19, 1998. With this move, Applicant and his children joined his wife as citizens of Israel.[(5)] Making their move complete, the family bought a home and, in 1999, a third child was born.

Living in Israel was Applicant's wife's family. Her father, now 62, is a general surgeon in private practice. Her mother, now 60, is retired after serving as the director of training for a privately owned, U.S. based medical imaging equipment company. Applicant's wife's brother is currently a 28-year-old law student, an education for which he is personally paying without any government assistance.

Applicant continued with his job until April 30, 2000. Dissatisfied with the work environment and a diminishing work-load, he left his position for work in a different field. A year later, that job brought him back to the U.S. in order to support the company's product in a U.S. state. By the summer of 2001, the family had decided that it would be better for their children to return to the U.S. permanently, given that the Israeli peace process was not going well.[(6)] The full

family returned to the U.S. that September. Two years later, the family moved to their present location in order to permit the Applicant to return to work in the simulation industry.[(7)] They purchased their current home, in part, with the proceeds from the 2004 sale of their house in Israel.[(8)]

While residing in Israel as a citizen of that country, Applicant enjoyed certain benefits, including tax benefits, state health insurance, and a discount on the purchase of an automobile; he did not pay U.S. taxes on his earnings.[(9)] He also obtained an Israeli passport to facilitate his exit from, and return to, Israel.[(10)]

In January 2005, Applicant submitted his request to renounce Israeli citizenship.[(11)] On April 14, 2005, he mailed his Israeli passport, certificate of citizenship, and certificate of new immigrant tax benefits to the Embassy of Israel, noting that they were no longer of use to him since he had rescinded his Israeli citizenship.[(12)] Those documents were returned on April 21, 2005. On May 17, 2005, Applicant re-sent the same documents to the Israeli Embassy, again requesting that they keep them.[(13)]

Applicant's wife currently holds a permanent green card, alien registration. It shows that she has been a resident of the U.S. since June 9, 2003. She has the intent to apply for citizenship after the three year waiting period is over. Formerly a swim instructor, she is now a certified realtor.

The Israeli in-laws visit Applicant's family about twice a year.[(14)] They call, typically to speak to their daughter, approximately once a month.[(15)] On the occasions when Applicant speaks to them, the conversation turns to the children, the family, work, and other general topics. Applicant and his family also see the in-laws during their own near-annual trip back to Israel. As for Applicant's wife's brother, Applicant typically has no contact with him unless they are in Israel because the brother-in-law initiates contact only randomly.[(16)] Applicant's wife only occasionally speaks to her brother by phone.

POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating a person's eligibility to hold a security clearance. Included in the guidelines are disqualifying conditions (DC) and mitigating conditions (MC) applicable to each specific guideline. Considering the evidence presented as a whole, Guidelines B and C, pertaining to foreign influence and foreign preference, respectively, apply in this case.

Additionally, each security clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, and the factors listed in the Directive. Specifically these are: (1) the nature and seriousness of the conduct and surrounding circumstances; (2) the frequency and recency of the conduct; (3) the age of the applicant; (4) the motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences; (5) the absence or presence of rehabilitation; and (6) the probability that the circumstances or conduct will continue or recur in the future. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance.

The sole purpose of a security clearance determination is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.(17) The government has the burden of proving controverted facts.(18) The burden of proof is something less than a preponderance of evidence.(19) Once the government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against

him.(20) Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.(21)

No one has a right to a security clearance(22) and "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."(23) Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.(24) Consequently, a decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.(25) It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find the following adjudicative guideline most pertinent to the evaluation of the facts in this case:

Guideline B - Foreign Influence. *The Concern* - A security risk may exist when an individual's immediate family, including cohabitants, and other persons to whom he or she may be bound by affection, influence, or obligation are not citizens of the United States or may be subject to duress. These situations could create the potential for foreign influence that could result in the compromise of classified information. Contacts with citizens of other countries or financial interests in other countries are also relevant to security determinations if they make an individual potentially vulnerable to coercion, exploitation, or pressure.(26)

Guideline C - Foreign Preference *The Concern* - When an individual acts in such a way as to indicate a

preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States. (27)

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions below.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a case for disqualification under Guideline B (Foreign Influence) and Guideline C (Foreign Preference).

With respect to Guideline B (Foreign Influence), the government has established its case. Applicant admits that his in-laws and brother-in-law are citizens and residents of Israel, and that his wife is a citizen of Israel. These facts raise both a security concern and Foreign Influence Disqualifying Condition (FI DC) E2.A2.1.2.1 ([*a*]*n immediate family member, or a person to whom the individual has close tiers of affection or obligation, is a citizen of, or resident or present in, a foreign country*) applies. Similarly, with specific regard to Applicant's wife, FI DC E2.A2.1.2.1 ([*s*]*haring living quarters with a person or persons, regardless of their citizenship status, if the potential for adverse foreign influence or duress exists*) applies.

Under the Directive, these potentially disqualifying conditions may be mitigated. In particular, Foreign Influence Mitigating Condition (FI MC) E2.A2.1.2.1 ([*a*] *determination that the family member(s), (spouse, father, mother, sons, daughters, brothers, sons), cohabitant, or associate(s) in question are not agents of a foreign power or in a position to be exploited by a foreign power in a way that could force the individual to choose between loyalty to the person(s) involved and the Untied States*) applies. I base this finding after conducting the following assessment:

First, neither Applicant's wife nor any of his three in-laws are members of the military forces or the government of Israel; they are, indeed, private citizens. Applicant's wife, who has no obligations to Israel, has accompanied him as wife and mother since their marriage over 15 years ago. During that time they have had children, flourished as family, and finally settled in a U.S. community which inspires their faith and meets both their social and occupational needs. She has her permanent resident card and is pursuing full citizenship. Currently, she is working as a certified realtor following a period of teaching swimming. Her father in Israel is a surgeon with a private practice and her mother is retired from her position with a privately owned, U.S.-based company. Her brother, a law student, receives no government assistance for his education or expenses. There is no indication in the record that any one of these individuals enjoys any special or covert relationship with any government and there is no indication that any one of them is an "agent of a foreign power," as defined by either 50 U.S.C.A. § 1801(b) or by the common vernacular.

Second, in order to assess whether an applicant is vulnerable to exploitation through relatives or associates in a foreign country, one must consider several factors, including the character of the government of the relevant foreign country. Israel is a democracy. It is a longtime friend and ally of the U.S., with ties of unique historical, diplomatic, and social significance. In spite of these facts, Israel has engaged in economic and industrial espionage against the U.S.

Given the character of the Israeli government and its people, however, it is highly unlikely that coercive measures would ever be used against these in-laws. Such measures would be antithetical to its democracy and its practices. Although non-coercive measures do exist, there is no evidence indicating that the government of Israel, or any other entity meeting the definition of a "foreign power," sponsors or encourages such efforts to exploit private Israeli citizens or residents for that purpose. Given present circumstances, the possibility that a "foreign power" would attempt to exploit or pressure Applicant's wife or in-laws in order to force Applicant to act adversely to the interests of the U.S. may exist, but it is highly remote.

Third, one must also consider the vulnerability of Applicant's relatives to duress. Applicant's wife lives and works in a major American metropolitan area, residing with Applicant and their children in the U.S. His in-laws, as stated, live in Israel, an open democracy; they are sufficiently affluent to live free from governmental assistance and are more than capable of moving freely within their country and, indeed, throughout the world as private and financially independent individuals. As such, all relatives of concern are sufficiently removed from the potential of non-speculative duress. Should the improbable occur, however, Applicant has already demonstrated that he knows to report probative questioning from foreign nationals, and he has thoughtfully articulated the approved process for reporting acts of exploitation to the FBI.

Other mitigating conditions exist and must be considered. Contact with Applicant's wife and in-laws is obviously not the result of business, so FI MC E2.A2.1.3.2 ([*c*]*ontacts with foreign citizens are a result of official United States Government business*) manifestly does not apply. Indeed, his contact with his wife is daily and intimate. Although his contact with his in-laws may only include parts of monthly phone calls with his parents-in-law,[(29)] Applicant and his family have spent significant time together: whilst living in Israel, during his family's annual trip to Israel, and during his in-laws' multiple trips per year to the U.S. Consequently, FI MC E2.A2.1.3.3 (*contacts and correspondence with foreign citizens are casual and infrequent*) does not apply.

During his initial security interview process in Israel, questions as to his loyalties arose. He specifically reported the incident and the questions promptly upon his return. Although questions with regard to workplace loyalties and ethics are not tantamount to issues in which family members may be in jeopardy, Applicant did appropriately report the interview.[(30)] As such, FI MC E1.A2.1.3.4 ([*t*]*he individual has promptly reported to proper authorities all contacts, requests, or threats from persons or organizations from a foreign country, as required*) applies.

Since leaving Israel, Applicant decided he and his family would never return to Israel to live.[(31)] As a result, he transferred his financial interests to the U.S. His home in Israel was sold and all its proceeds put toward the purchase of his current home. He no longer has any funds or other property in Israel.[(32)] Given that he no longer has investments in Israel, FI MC E2.A2.1.3.5 ([*f*]*oreign financial interests are minimal and not sufficient to affect the individual's security responsibilities*) applies.

Having determined that the relations at issue are neither agents of, nor in a position to be exploited by, a foreign government, and concluded that he has an established record of reporting dubious questioning by foreign nationals, I have also considered Applicant as a "whole person." Applicant's immediate family, finances, and present employment are here in the U.S. His experiment in living in the Israel failed, and he has returned vowing to never again live in Israel. Applicant is older now, entering his middle years, and his children are now at an age requiring stability. He has taken all appropriate steps to reinvest himself fully in the U.S.[(33)]

and to divorce himself from Israeli citizenship. Taken together, I find that Applicant is not vulnerable to foreign influence that could result in the compromise of classified information and that he has not acted in a manner that could make him prone to provide information harmful to the U.S.

With regard to Guideline C (Foreign Preference), the government has met its burden. Applicant admitted he possesses and has benefitted from dual citizenship with Israel, possesses and has used a foreign passport, and accepted benefits such as health insurance and car price discounts from Israel. Therefore, Foreign Preference Disqualifying Condition (FP DC) E2.A2.1.2.1 ([*t*]*he exercise of dual citizenship*), E2.A2.1.2.2 ([*p*]*ossession and/or use of a foreign passport*), and E2.A2.1.2.3 ([*a*]*ccepting educational, medical, or other benefits, such as retirement and social welfare, from a foreign country*) apply.

Applicant was born in the U.S. and raised in the U.S. by parents who are U.S. citizens, but originally from Latin America. Therefore, Foreign Preference itigating Condition E2.A3.1.3.1 ([*d*]*ual citizenship is based solely on parents' citizenship or birth in a foreign country*) does not apply. His U.S. citizenship was conferred at birth and his interest in living in Israel occurred several years after his marriage to an Israeli citizen. Consequently, FP MC E2.A3.1.3.2 ([*i*]*ndicators of possible foreign preference (e.g., foreign military service) occurred before obtaining United States citizenship*) does not apply. FP MC E2.A3.1.3.3 ([*a*]*ctivity is sanctioned by the United States*) is not applicable.

Since returning to the U.S., however, Applicant has commenced the process to renounce his Israeli citizenship. Moreover, he has returned his expired Israeli passport to the Israeli Embassy at Washington and, as of the date this record closed, it was no longer in his possession. Financially, he has repaid the state of Israel for benefits received while there. Such gestures constitute more than a desire to renounce Israeli citizenship; they are concrete acts expressing his true intent to renounce his dual citizenship. Therefore, FP MC E2.A3.1.3.4 ([*i*]*ndividual has expressed a willingness to renounce his dual citizenship*) does apply.

In light of the above, I again have considered the Applicant under the "whole person" concept. There was a time when

Applicant chose to take his family and live in Israel, rather than continue his life in the U.S. He chose to take the unknown path, rather than return to his hometown. Disillusionment with Israeli work ethics and the country, however, began. With the peace process in Israel breaking up, and Applicant already in the U.S. on an extended assignment, the family concluded that the U.S. was, in fact, the better place to raise their children. In short, they followed a dream and it did not pan out. It was the attraction of living in what seemed their ideal - a strong and prevalent Jewish community with family nearby and jobs available - not a preference for Israel, that inspired the move that Applicant now renounces. Indeed, he has done everything possible to expedite and effectuate that renunciation as he waits for the process to conclude. Based both on this independent basis and the discussion *supra*, I conclude Applicant, through his evidence and his very credible testimony, has mitigated any potential security concerns arising from his wife, his in-laws, and his experiment living in Israel.

FORMAL FINDINGS

Formal Findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1. Guideline B: FOR APPLICANT

Subparagraph 1.a: For Applicant

Subparagraph 1.b: For Applicant

Paragraph 2. Guideline C: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: For Applicant

Subparagraph 2.d: For Applicant

Subparagraph 2.e: For Applicant

Subparagraph 2.f: For Applicant

Subparagraph 2.g: For Applicant

DECISION

In light of all of the circumstances in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is Granted.

Arthur E. Marshall, Jr.

Administrative Judge

1. This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

2. Applicant denied subparagraph 2b (maintaining dual citizenship) and subparagraph 2d (own property in Israel).

3. Tr. 120. Applicant continues visiting Israel on an annual basis to date. Tr. 134.

4. During this interview, questions of loyalty were pursued by Israel security. These included whether Applicant, in the face of conflict, would choose loyalty to Israel or the U.S.; Applicant said the U.S. Tr. 97. The interview was promptly reported to is supervisor on his return to the U.S. Tr. 138-139. *Contrast* Applicant's reporting response to the FBI should he be confronted with a threat to his family. Tr. 115.

5. In discussing his receipt of Israeli citizenship and the Israeli "Law of Return," Applicant noted that "(u)pon making or desiring to make permanent residency in Israel, they simply provide it. They said it's automatic. My understanding, there's a law of return, and that it's automatic.... The Israeli law of return (is) that if someone is Jewish, then when they go to the state of Israel, they automatically obtain citizenship." Tr. 102. *Compare* The Israeli Law of Return, 1950, S.H. 51 5710-1950, Section 2b (1950).

6. Tr. 101.

7. Tr. 102.

8. After the sale of the house, Applicant no longer has any property or money in Israel. Tr. 110-111.

9. Applicant has since reimbursed Israel for the benefits he received. Tr. 134.

10. During his time in Israel, he used the Israeli passport in this manner on several business trips to the U.S. and on his sole vacation to visit family. For entry into the U.S., he would use his American passport. Tr. 125-126.

11. No similar request was made on behalf of Applicant's children.

12. Applicant's Exhibit B (Letter to Israeli Embassy, dated April 14, 2005).

13. Applicant's Exhibit W (Letter to Israeli Embassy, dated May 17, 2005). As of the morning of May 24, 2005, the day of the hearing, Applicant had received no response from the Embassy regarding this attempt to return the documents.

14. Tr. 88.

15. *Id.*

16. Tr. 137.

17. ISCR Case No. 96-0277 at 2 (App. Bd. Jul. 11, 1997).

18. ISCR Case No. 97-0016 at 3 (App. Bd. Dec. 31, 1997); Directive, Enclosure 3, ¶ E3.1.14.

19. *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

20. ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995); Directive, Enclosure 3, ¶ E3.1.15.

21. ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan., 1995); Directive, Enclosure 3, ¶ E3.1.15.

22. *Egan*, 484 U.S. at 531.

23. *Id*.

24. *Id*.; Directive, Enclosure 2, ¶ E2.2.2.

25. Executive Order 10865 § 7.

26. Directive, Enclosure 2, Attachment 2, Guideline B, ¶ E2.A2.1.1.

27. Directive, Enclosure 2, Attachment 3, Guideline C, ¶ E2.A3.1.1.[(28)]

28. Directive, Enclosure 2, Attachment 2, Guideline B, ¶ E2.A2.1.1.

29. Phone contact may be minimal with his brother-in-law, but it has not been shown that contact with this in-law is equally *de minimis* during personal visits.

30. While of little actual weight, it is notable that Applicant has fully set forth how he would respond to a threat to is family, including how he would contact the FBI, during his testimony. Tr. 112-115.

31. Tr. 111.

32. Tr. 110.

33. As for his wife, she has prepared to apply for full citizenship following the three year waiting period.